



ENSPER response to the European Commission Green Paper *Equality and non-discrimination in an enlarged European Union*

The **E**uropean **N**etwork of **S**ervice **P**roviders in **E**mployment and **R**ehabilitation (ENSPER) is an independent, overall structure, grouping together three separate organisations – the *European Platform for Rehabilitation (EPR)*; *Workability Europe (WE)* and *Rehabilitation International (RI)*.

ENSPER's purpose is to give providers of work, employment and all kinds of rehabilitation services a single voice so they can have greater influence in the international decision-making process. The scope of ENSPER covers all actions and initiatives in the public affairs arena relating to people with disabilities and others who are experiencing disadvantage. In this way, the *European Platform for Rehabilitation*, *Workability Europe* and *Rehabilitation International Work & Employment Commission* are now working together in Europe:

- **to** promote Equality of Opportunity in work, training, employment, health, social care, and access to all kinds of rehabilitation services for people with disabilities;
- **to** specifically increase the range of employment opportunities and choices through individual employment;
- **to** raise the profile of disabled people as active and inclusive contributors to the economy and labour market;
- **to** promote quality and best practice in all areas relating to work, employment and rehabilitation services for people with disabilities.

In this context, ENSPER welcomes the open consultation initiated by the Commission's Green Paper on *Equality and non-discrimination in an enlarged European Union* and the opportunity it offers all stakeholders to express their views and provide their input to the design of the future strategy to combat discrimination and promote equal treatment.

As a result of a working meeting and a consultation carried out within its member organisations, in this document ENSPER sets out its response and recommendations to the Green Paper on *Equality and non-discrimination in an enlarged European Union*.



1. Meeting the challenge of enlargement

The publication of this Green Paper comes shortly after the May enlargement of the European Union. Non-discrimination is relevant to the new Member States and candidate countries for the same reasons that it is relevant to the old Member States. People with disabilities, Roma people, gays and lesbians as well as other groups, are subject to discrimination in old as well as in New Member States. However, their situation is particularly serious in New Member States. Therefore, in light of their political and socio-economic background, Central and Eastern European countries may require a different approach in tackling discrimination.

Central and Eastern European countries have undergone significant structural reforms during the past decade, taking them from planned, towards a free market economy. The situation of people with disabilities in these countries demands special attention. During the Communist era, disabled people were most often employed in state-run non-profit enterprises which no longer exist. The unemployment rate of disabled people and their number as a percentage of all unemployed job seekers have risen sharply, while competition in the labour market has increased due to recession and restructuring of the economic system. While unemployment is an acute problem for the working population as a whole, people with disabilities are in a more vulnerable position, due to their lack of employable skills and prevailing negative attitudes concerning their working capacity.¹

ENSPER calls for positive measures to support New Member States to improve service provision and employment opportunities for their disabled citizens. For example, a certain percentage of funding under the European Social Fund (ESF) can be reserved specifically for programmes which develop or regenerate disabled people's "employability".

The experience and expertise of the *European Platform for Rehabilitation, Workability Europe* and *Rehabilitation International* can be of significant assistance to the development of services for people with disabilities in these and in other emerging European countries.

2. Measuring effectiveness and trends

The Commission laments the chronic lack of mechanisms to collect data and to monitor trends and progress in Member States which makes it difficult to measure the effectiveness of legislation and policies to tackle discrimination. With due respect to ethical issues, ENSPER fully agrees that without reliable statistical data at European and national level, the proportion of disabled people to non-disabled people in employment cannot be measured; nor can the effectiveness of policies, programmes and actions designed to correct the known imbalance.

Neither can, without reliable statistics, be measured the availability and quality of rehabilitation services for people with disabilities.

Because so many disabled people are economically inactive, unemployment figures alone are not indicative of the numbers who would like to work, given the right opportunity and support.²

In this context, ENSPER welcomes the recently launched tender by the Commission "Collecting statistical data and developing context indicators regarding people with disabilities" in the EU. European service providers in employment and rehabilitation can be very helpful in the compilation of quantitative and qualitative data.

ENSPER calls on the Commission to provide via Eurostat, annual employment statistics, which will include information on the number of disabled people of working age in employment or unemployed. Firstly, we propose that the term 'unemployed' should include all economically inactive disabled people of working age. Secondly, this information should be used each year to monitor progress towards equality of employment rates as between able-bodied and disabled people in the labour market as a basis for the National Action Plans to accelerate progress towards equality.

3. Availability of services

ENSPER considers it vitally important that serious attention be given to the fact that many groups experiencing disadvantage remain on waiting lists for services and necessary supports throughout Europe. These include rehabilitation services (medical, vocational, social) and social care services (counselling, maternal and infant care, early child development, foster child care, assisted living and career development, services for the elderly, etc). Access to proper services for people with disabilities is a legal right in all countries but the unavailability or insufficiency of services has meant that this right is being violated. Disappointingly, the Green Paper does not raise the issue of inadequate service provision at all.

Through its Europe-wide membership, ENSPER has become aware of the necessity to highlight the fact that many people do not receive the service they are entitled to. In close cooperation with the European Disability Forum (EDF) and the European Association of Service Providers for Persons with Disabilities (EASPD), as well as with other relevant organisations of disabled people and service providers, ENSPER wants to advocate the availability of services for people with disabilities.

In order to establish how many disabled people across Europe do not have access to adequate rehabilitation services, reliable statistical indicators are necessary.



Even though precise statistical data is unavailable, findings³ have concluded that: (i) only a few countries seem to have reliable data on waiting lists; (ii) in many cases the responsibility for the collection and distribution of waiting lists data is not clearly identified; (iii) where reliable figures about the availability of services for people with disabilities do exist, it is difficult to establish which relevant authority or statistical office has the final figures; and (iv) a minimum of 500,000 people with complex needs and their families are on waiting lists for the support and services they require.

Service providers for people with disabilities are under increasing pressure to organise services without having the necessary financial means. It is in the nature of not-for-profit organisations that are born out of the community to respond to the needs of socially marginalised groups. However, this is becoming increasingly difficult without the allocation of the necessary resources to attend to these needs.

Finding viable ways of financing are necessary, but not sufficient to support effective service provision. In order to carry out comprehensive and accurate needs assessment of disabled Europeans, it is imperative that the relevant national authorities and service providers should act now, in close cooperation with the European Commission and organisations of disabled people to: (i) obtain reliable data on the present situation with regard to waiting lists for services and supports; (ii) carry out needs assessments using the data gathered and develop national strategic plans to meet the identified needs; (iii) ensure quality of provision such as standards and accreditation, training, information to clients, and monitoring procedures.

Failure to provide adequate service for disabled citizens is a form of discrimination in itself. Hence, ENSPER calls on the European Commission to place the issue of availability of services as a priority on the European agenda.

4. Quality of services

Increasing the employment rate of people with disabilities and enhancing their full integration in the society requires - next to various other measures - medical, vocational and social rehabilitation services of high quality. At the same time, the quality of these services is increasingly under pressure due to following developments in the sector throughout all the member states of the European Union: decreasing budgets for services to people with disabilities; increasing focus on cost-effectiveness of rehabilitation services; greater competition and liberalization of the market of service-provision to people with disabilities which involves the establishment of many new service-providers that often lack experience of specific expertise; less opportunities for service providers for building up expertise and training of staff.

At the same time, it should be noted that the free movement in the EU will result in an “Europeanisation” of the rehabilitation market. People with disabilities will increasingly receive services in other EU member states, rehabilitation professionals will more often operate in different countries and service-providers will more easily set up cross-border operations.

The growing importance of quality in combination with the “Europeanisation” of the rehabilitation market, calls for quality standards and a quality assurance system at European level. It would not only provide guarantees to users and purchasers of services, but at the same time allow “good” service providers to distinguish themselves from their competitors.

Different routes can lead to achieving this goal, but it should be mentioned in this respect that there is already one European quality system in place which is sector specific and operated by the main European stakeholders in the field of disability: the *European Quality in Rehabilitation Mark (EQRM)*. Any European quality system for rehabilitation services should in any case be flexible enough to be operated within the different national contexts in the EU member states, and involve people with disabilities in the design and operating of the system.

ENSPER calls on the European Commission to actively support the operating of a European quality system that focuses on the rehabilitation sector by: (i) putting the issue on the agenda of the *High Level Group of Member States’ Representatives on Disability*; (ii) stimulating national authorities to recognise a European quality system and to link it to existing national accreditation systems; (iii) directly involving itself in the development and operating of European quality systems in this sector.

5. Programmes and resources

Within the continuum of rehabilitation and employment services there is a lack of adequate funding. ENSPER proposes that more resources should be allocated to programmes promoting mainstream employment for people with a whole range of disabilities, recognising their individual abilities and requirements. In this context, sustainable EU funding of service providers must be guaranteed to allow them to invest in their services within a policy of continuous improvement and best practice.

The Community Action Programme to combat discrimination 2001-2006 has certainly helped to raise awareness and support training and other practical measures to promote equal treatment. However, ENSPER regrets that calls for proposals under the programme have exclusively supported European level NGOs representing and defending the rights of disabled people.



Calls for proposals have not been open to European level NGOs providing services for disabled people. Also, service providers, do not benefit from EU core funding.

Not-for-profit NGOs representing and defending the rights of disabled people and not-for-profit NGOs service providers are two sides of the same coin. Both ultimately share the same overriding objectives for full integration and equal opportunities for disabled people in society. Both are partners in this process.

Thereafter, ENSPER calls on the European Commission for increased possibilities for service providers to apply for funds in the framework of the *Community Action Programme to combat discrimination 2001-2006* in order to enable service providers to play their full role in the integration of people with disabilities in all spheres life.

6. Reinforcing cooperation with stakeholders

The European Commission rightly recognises that everyone has a part to play in securing an inclusive Europe. At one end of the spectrum Governments must give the lead, set the agenda and ensure the implementation of legislation. At the other end, employers must accept their responsibilities and act accordingly. In between are disabled people themselves and their representative organisations and service providers in employment, education and rehabilitation. All these stakeholders need to work in partnership.

In this context, ENSPER welcomes the European Commission initiative to deepen co-operation between the Commission, the Council of Europe, Member States and civil society by means of regular consultation process in the framework of the *High Level Group of Member States' Representatives on Disability*. The Work Programme 2004-2005 of the High Level Group represents an important start. It addresses key challenges such as the ageing population; community based services; access; quality of services; issues for persons with complex dependency needs and enlargement.

However, ENSPER would like to see greater involvement of NGOs in the preparation of the agenda for the meetings of the High Level Group.

7. Women with disabilities

Regrettably, ENSPER finds that the Green Paper pays virtually no attention to the particular circumstances of people experiencing discrimination on more than one ground, i.e. women with disabilities, disabled Roma people, etc.



A special case in point is women with disabilities. To date, the situation of women with disabilities in Europe has not been given the visibility and political importance it deserves and requires.

Although on the one hand, problems relating to women and, on the other, problems relating to people with disabilities are being addressed separately with increasing attention and urgency, no serious approach has yet been taken to tackle the dual discrimination to which women with disabilities are being subjected.

The issue of gender equality, and in particular the double discrimination based on gender and disability, has been the subject of considerable concern and research within ENSPER member organisations in the last few years.⁴ A number of areas have been identified as crucial for the status of women with disabilities. These are education and training, employment, social policy, participation and access to decision-making, sexuality, prejudices and social representation, motherhood, family and domestic life, and violence. Measures must be taken in all these areas to secure for women with disabilities independence, autonomy, participation and social integration. In all areas, policies relating to people with disabilities should be framed and adopted bearing in mind that they cannot be successful unless they account of the gender dimension.⁵

ENSPER calls for recognition of the problems of women with disabilities and funding of specific services and programmes by national authorities promoting solutions such as the need for mainstreaming in education, promoting self-esteem, the need for effective (pre-)vocational rehabilitation, access to childcare provision, consultation of women with disabilities, their organisations and service providers asserting the right to sexuality and to a family; promotion of positive image of women and girls with disabilities in the media, prevention and punishment of any abuse and immediate access for victims to appropriate assistance.

8. The International Classification of Functioning, Disability and Health (ICF)⁶

The non-discrimination and equality approach, regardless of the jurisdiction within which it is implemented, runs into difficulty when it incorporates disability as a ground for discrimination. In comparison to other characteristics specified within the Amsterdam Treaty such as age, ethnicity, marital status, gender or sexual orientation, disability is not a 'steady state' status. The European Commission has accepted that disability arises from a dynamic interaction between a person and his or her environment. Experience from other jurisdictions e.g. the US indicates that the first offence against a claim on the grounds of disability is that the claimant is not disabled under the law. Such a defence would be impossible if the defence were taken on the grounds of gender, age, religion, ethnicity, marital status or even sexual orientation.



According to the recent *Quarterly National Household Survey (QNHS, 2002)*, less than 4% of the population between the ages of 0 and 4 have disabilities. In contrast over 30% of the population of people between the ages of 55 and 65 have long standing health or persistent disabling conditions. There is no other ground for discrimination that exhibits a similar geometric growth with age. There are many thousands of people many of them in the older age groups who are in the process of becoming disabled within the European workforce. Most of these are not covered by existing non-discrimination legislation. It is even doubtful that a non-discrimination approach would be sufficient to protect their jobs and their livelihoods.

The European Commission would do well to consider how the *International Classification of Functioning, Disability and Health (ICF)* drafted by the World Health Organisation (WHO, 2001) might inform measures to combat discrimination on the grounds of disability. Of particular relevance within the ICF model are the concepts of capacity, activity limitation, participation restriction and the role of the environment.

Within the ICF model, non-discrimination legislation is considered to be an environmental factor. In these terms Article 13 of the Amsterdam Treaty only makes sense for people with disabilities if the concepts of 'Prevention and Early Intervention' and 'positive action' are incorporated into EU policy and legislation for people with disabilities.

The fundamental problem with the current non-discrimination approach to disability within the EU, and which is shared by all jurisdictions that operate similar systems, is that such approaches when applied in jurisprudence provide redress after the fact. Disability by its very nature requires proactive responses to enhance a persons' capacity he or she experience a reduction of functioning access, compensatory approaches to redress activity limitations where required and proactive measures to increase the participation of those 'at risk of' discrimination on the grounds of disability.

An effective programme to combat discrimination on the grounds of disability must include an integrated approach between Occupational Health and Safety, Employment, Social Inclusion, Social Protection, Disability, Public Health and Equality Policy. At the core of such an approach is the provision of safe and timely interventions to enhance an individual's capacity, reduce activity limitations and promote community and social participation. Equality and non-discrimination can play a role in this by specifying a refusal to partake in or provide early intervention in terms of adapted environments or technology and rehabilitation as grounds for discrimination under EU law.

Endnotes:

¹ *Vocational Rehabilitation and Training in EU Accession Countries, Seminar Report*, ILO, 2001.

² *Reykjavik Declaration*, Workability International Europe, 2002.

³ *Paper Availability of Services*, European Association of Service Providers for Persons with Disabilities (EASPD), 2004.

⁴ European Platform for Rehabilitation (EPR) cross-country project group studies *Participation of Women in Vocational Rehabilitation Programmes (2002)* and *A flexible model of pre-vocational training for women with disabilities (2003)*.

⁵ *Discrimination against women with disabilities*, Council of Europe, 2003.

⁶ Response to the European Commission Green Paper: *Equality and non-discrimination in an enlarged European Union*, Dr D. F. McAnaney, Rehab Group Research, 2004.

Contact:

Address ENSPER, Rue de Spa 15, B-1000, Brussels, Belgium
Tel + 32 2 736 54 44 / +32 2 235 66 64
Fax + 32 2 736 86 22
E-mail martin.ohridski@epr.be
Website www.ensper.org

